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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,423

04/12/2004

Stephen P.A. Fodor

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22886

7590

12/28/2006

AFFYMETRIX, INC

ATTN: CHIEF IP COUNSEL, LEGAL DEPT.

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EXAMINER

LIU, SUE XU

ART UNIT

PAPER NUMBER

1639

MAIL DATE

DELIVERY MODE

12/28/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	10/822,423	FODOR, STEPHEN P.A.	
	Examiner	Art Unit	
	Sue Liu	1639	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 12/6/06. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-7 and 9-11.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 11/15/06  
13. ☐ Other: \_\_\_\_\_.

JON EPPERSON  
PRIMARY EXAMINER

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**Continuation Sheet**

Item 3: Applicants' proposed amendments to the claims are not entered, because they may require new search, and the amended claims may raise new issues such as the ones under 35 USC 112 2<sup>nd</sup> paragraph.

Item 12: IDS filed on 11/15/06 is not considered, because Applicants have failed to comply with 37 CFR 1.97 (e).

Item 11:

Claim Rejections withdrawn:

A.) Claims 1-7 and 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is withdrawn due to applicant's amendments to the claims.

B.) Claims 1-7 and 9-11 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 5,800,992. This rejection is withdrawn due to applicant's filing of Terminal Disclaimer, 12/6/06.

C.) Claims 1, 2, and 4-7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,309,822 B1. This rejection is withdrawn due to applicant's filing of Terminal Disclaimer, 12/6/06.

D.) Claims 1-7 and 9-11 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 16, 17 and 39-64 of U.S. Patent No.

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6,576,424 B2. This rejection is withdrawn due to applicant's filing of Terminal Disclaimer, 12/6/06.

E.) Claims 1, 2, and 4-7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 and 20 of U.S. Patent No. 6,551,784 B2. This rejection is withdrawn due to applicant's filing of Terminal Disclaimer, 12/6/06.

**Claim Rejections Maintained:**

A.) Claims 1-7 and 9-11 as amended or originally filed are rejected under 35 U.S.C. 102(b) as being anticipated by Fodor et al (US 5,800,992; 09/01/1998). The previous rejection is maintained for the reasons of record as set forth in the Office action, mailed 12/16/05, at p. 4-5.

B.) Claims 1, 2, 4-7, 9 and 10 as amended or originally filed are rejected under 35 U.S.C. 102(b) as being anticipated by Fodor et al (US 6,309,822 B1; 10/30/2001). The previous rejection is maintained for the reasons of record advanced on p. 5-6 of the Office action mailed on 12/16/05.

C.) Claims 1-7 and 9-11 as amended or originally filed are rejected under 35 U.S.C. 102(e) as being anticipated by Fodor et al (US 6,576,424 B2; 06/10/2003; filed 1/25/2001). The previous rejection is maintained for the reasons of record as set forth in the Office action, mailed 12/16/05, at p. 6-7.

D.) Claims 1, 2, 4-7, 9 and 10 as amended or originally filed are rejected under 35 U.S.C. 102(e) as being anticipated by Fodor et al (US 6,551,784 B2; 4/22/2003; filed 5/9/2001).

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The previous rejection is maintained for the reasons of record as set forth in the Office action, mailed 12/16/05, at p. 7-8.

E.) Claims 1-7 and 9-11 as amended or originally filed are rejected under 35 U.S.C. 103(a) as being unpatentable over Lichtenwalter (US 5,683,875; 11/04/1997), in view of Fodor et al (US 5,800,992; 09/01/1998). The previous rejection is maintained for the reasons of record as set forth in of the Office action, mailed 12/16/05, at p. 8-10.

Applicants' briefly argue that the amended claims drawn on a method that is different from the teachings of all the cited references (Reply, p. 5-6). However, applicants have not specifically pointed out how the cited references failed to teach all elements of the instant claimed method. The cited references teach all elements of the claimed invention as discussed in the previous Office actions.